

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

BILLY LEE SEXTON,

Plaintiff,

v.

UNKNOWN,

Defendant.

No. 2:22-CV-01642-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel, ECF No. 10.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances. Plaintiff fails to provide any factual support regarding extraordinary need and
10 only states that appointment of counsel is warranted because his is disabled, the case is
11 complicated, and is beyond his mental capacity. See ECF No. 10, pg. 2. Thus, Plaintiff has
12 failed to satisfy the standard set forth in Terrell.

13 Plaintiff's stated circumstances, however, are not extraordinary. A review of the
14 filings to date indicates that Plaintiff can articulate his claims on his own, which are neither
15 factually nor legally complex, inasmuch as he independently prepared and filed a civil rights
16 complaint, motion to proceed in forma pauperis, and requested the assistance of counsel. Further,
17 at this stage of the proceedings, it cannot be said that Plaintiff has established a particular
18 likelihood of success on the merits as Plaintiff has been given an opportunity to amend his civil
19 rights complaint, see ECF No. 8, which has not yet been filed. Therefore, there is no evidence
20 presently before the Court to allow for an evaluation of the merits or complexity of the matters at
21 issue. As such, exceptional circumstances warranting the appointment of counsel do not currently
22 exist.

23 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the
24 appointment of counsel, ECF No. 10, is denied.

25 Dated: December 9, 2022



26 DENNIS M. COTA
27 UNITED STATES MAGISTRATE JUDGE
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